

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

MICHAEL EUGENE WASHINGTON,

Petitioner,

v.

**CIVIL ACTION NO. 3:11-CV-1
CRIMINAL ACTION NO. 3:10-CR-12
(BAILEY)**

UNITED STATES OF AMERICA,

Respondent.

**ORDER ADOPTING OPINION/REPORT AND RECOMMENDATION
ON PETITIONER'S § 2255 MOTION**

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge John S. Kaull. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Kaull for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Kaull filed his R & R on January 10, 2011 [Crim. Doc. 51 / Civ. Doc. 4]. In that filing, the magistrate judge recommended that this Court deny the petitioner's application under 28 U.S.C. § 2255 [Crim. Doc. 45 / Doc. 1] as premature.

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1);

Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Objections to Magistrate Judge Kaull's R & R were due within fourteen (14) days of being served with a copy of the same, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). The docket reflects that service was accepted by January 18, 2011. See Crim. Doc. 54 / Civ. Doc. 6. Neither party filed objections to the R & R. Accordingly, this Court will review the report and recommendation for clear error.

Upon careful review of the report and recommendation, it is the opinion of this Court that the magistrate judge's **Report and Recommendation [Crim. Doc. 51 / Civ. Doc. 4]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, the Court hereby **DENIES** the petitioner's application under 28 U.S.C. § 2255 [**Crim. Doc. 45 / Civ. Doc. 1**], and **DISMISSES** it **WITHOUT PREJUDICE**. Accordingly, this matter is hereby **ORDERED STRICKEN** from the active docket of this Court. The Clerk is **DIRECTED** to enter judgment for the respondent.

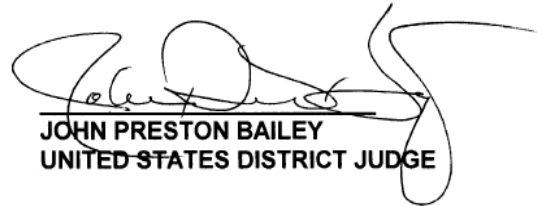
Pursuant to Rule 11(a) of the Rules Governing Section 2254 and Section 2255 Cases, this Court declines to issue a certificate of appealability as the petitioner has not made a substantial showing of a denial of a constitutional right. 28 U.S.C. § 2253(c)(2); **Miller-El v. Cockrell**, 537 U.S. 322, 336-38 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong (citing **Slack v. McDaniel**, 529 U.S. 473, 484 (2000))).

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record and to

mail a true copy to the *pro se* petitioner.

DATED: February 14, 2011.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE